Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-987

R. W. Jones, Sr., et al,
Petitioners,

vs

Charles T. Wolf, et al,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF AMICUS CURIAE, WILLIAM P. THOMPSON, STATED CLERK OF THE GENERAL ASSEMBLY OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

GAYLEN J. BYKER
GEORGE W. McKEAG
123 South Broad Street
Philadelphia, PA 19109

Attorneys for Amicus Curiae
William P. Thompson

PRESS OF ALLEN, LANE & SCOTT, INC., PHILADELPHIA

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CONSENTS TO FILE THIS BRIEF

Amicus curiae has obtained written consent from counsel for the Petitioners and from counsel for the Respondents that he may file this brief. The original letters of consent are being filed with the Clerk of this Court concurrently with this brief.

THE STATUS OF AMICUS CURIAE

William P. Thompson is the Stated Clerk of The United Presbyterian Church in the United States of America ("UPCUSA"), a voluntary religion association organized in 1706. He is the chief executive officer of the supreme body of the UPCUSA, the General Assembly, and he is responsible for the preservation of all church property.

On December 31, 1979, the UPCUSA had approximately 2,500,000 members, 14,186 ordained ministers and 8,634 particular or neighborhood churches. Each neighborhood church is governed by representatives elected to a board called the Session. The neighborhood churches in a district are organized into a governing body called a Presbytery, which has authority over all of the churches in the district. The Presbyteries in a larger district are organized into a governing body called a Synod, which has authority over all of the churches and Presbyteries in the district. In the UPCUSA, there are 152 Presbyteries and 15 Synods. All of the neighborhood churches, the Presbyteries and Synods are under the supreme governing authority of the General Assembly of the UPCUSA, which is composed of commissioners elected to that body by the Presbyteries.

Amicus curiae considers proper resolution of the issues presented by this case to be vital to the survival of the hierarchical church of which he is the executive officer, and to the survival of all other churches adhering to the hierarchical principles of unity of doctrine, government and property. *Amicus curiae* believes the Georgia Court's decision tends to destroy these sacred principles, and that it violates freedom of religion and the Constitution of the United States.

REASONS WHY THE WRIT SHOULD BE GRANTED

Amicus curiae respectfully submits that the Supreme Court of the United States should grant certiorari in this case, *if for no other reason*, to provide a clarification of the application of a number of points recently announced in *Jones v. Wolf*, 99 S.Ct. 3020 (1979) ("*Jones v. Wolf I*").

It is very important to *amicus curiae* and, in fact, to all hierarchical churches, that such clarifications occur to avert the confusion threatened by *Jones v. Wolf I* and its modifications of the settled principles of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). Two aspects of the threatened confusion will be reviewed here.

I. The Georgia Supreme Court's decision fails to recognize that the unitary hierarchical church denomination—not the local congregation—is the voluntary association to which the members belong, and that it is the denomination—not the local congregation—which is governed by majority rule.

The functions of the unitary hierarchical church government of the Presbyterian Church in the United States ("PCUS"), following the sacred scriptures and the practice of the primitive Christian Church, have always included control over all church property by the denomination acting as one body with a united voice.

The language and holding in *Watson*, a case dealing specifically with a church government/church property dispute, are perfectly clear that the relevant association is the denomination which, as a unitary body of hierarchical structure governs the church and controls its property:

> In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not

violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. *The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned.* All who unite themselves to *such a body* do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding only to such appeals as the organism itself provides for.

Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), *has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs,* which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. Id. at 728-729. (Emphasis added.)

The Georgia Court's use of a presumption of local majority rule that contradicts the decision of the unitary

hierarchical church on a matter finally decided by the collected wisdom and united voice of the whole church and that cannot be overcome with evidence of church precedent, usage and tradition, strikes at the very heart of Presbyterian church structure and government. The voluntary association to which the members of the Vineville Presbyterian Church belong is the PCUS, and to permit a majority of the local members to prevail over the decision of the Church as a whole, violates both the Free Exercise and Establishment clauses of the First Amendment as interpreted for over a century.

The decision of the Georgia Court is confused as to the identity of the voluntary association to which the withdrawing members belonged. By ignoring the decision of the church judicatories within the PCUS, it imposes upon all the members of the denomination, save the members of the Vineville congregation who voted to withdraw, a form of church government to which they have never consented. In so doing, the Georgia Court impermissibly announces and enforces a decision on PCUS church polity which states that the local congregation, rather than the unitary national hierarchical church, is the voluntary association to which the members belong and which is governed by majority rule.

II. The resolution of church government/church property disputes on a state-by-state basis creates intolerable confusion within national hierarchical churches.

The approach suggested by the court in *Jones v. Wolf I* allows the various states to apply at random any purported neutral principle of law, based on predilections of the judges within that particular jurisdiction. Such an approach results in confusion, and renders the survival of the national hierarchical churches questionable. In the final analysis, this approach results in a form of administrative law in each state which must be adhered to by hierarchi-

cal churches. Churches can exercise freedom of religion, so long as that exercise does not touch on the issue of the relationship between church government and church property. The carving of such an exception from the protection of the First Amendment was certainly not a result anticipated by the founding fathers.* The right to control of the real and personal property of the church is as much a part of the religion as the doctrine, creed and form of government which the church and its members have chosen to adopt, and decisions of doctrine, creed and form of government are inextricably bound up with church property decisions.

Mr. Justice Frankfurter hit the nail on the head in his concurring opinion in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, at p. 121:

> St. Nicholas Cathedral is not just a piece of real estate. . . . What is at stake here is the power to exercise religious authority. That is the essence of this controversy.

National hierarchical churches can no longer rely on their traditions, precedents and creeds to determine the proper manner of exercising their religion. Since the effect of these traditions, precedents and creeds will vary from state to state, there is and will continue to be confusion as to the authority of church officials and judicatories and the need to deviate from the teachings of scripture and primi-

*Presbyterians were among those considered dissenters in Colonial days. They were among those who needed the assurance of the First Amendment. Moreover, the distinctive characteristics of the Presbyterian Church are governmental. Other denominations adhere to the same Reformed beliefs as the Presbyterians, but three governmental characteristics must be present for a church to be Presbyterian. The governmental characteristics of differentiation are: (1) the parity of the clergy; (2) substantive participation in church government by the laity; and (3) unity of government, *i.e.*, the parts are integral and comprise the whole.

tive church practice to comply with the dictates of the state. Consequently, this Court should grant the Petition for Writ of Certiorari to reconsider the function of civil courts in church government/church property disputes in unitary hierarchical churches.

CONCLUSION

For all the reasons set forth above, we respectfully urge the Court to grant a Writ of Certiorari and reverse the decision below.

GAYLEN J. BYKER
GEORGE W. MCKEAG
123 South Broad Street
Philadelphia, PA 19109

Attorneys for Amicus Curiae
William P. Thompson